

**HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990 SECTION 30**  
**HUMAN FERTILISATION AND EMBRYOLOGY ACT**

**INTRODUCTION**

**THE PARENTAL ORDERS FOR GAMETE DONORS REGULATIONS 1993**

**A Consultation Paper**

**ENGLAND, WALES**  
**AND NORTHERN IRELAND**

**Department of Health**  
**May 1993**

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**PARENTAL ORDERS IN FAVOUR OF GAMETE DONORS REGULATIONS 1993**

**INTRODUCTION**

1. These regulations introduce new procedural arrangements that are necessary to transfer legal parenthood to the commissioning couple, where a child is born to a surrogate mother and the gametes used in the child's conception are those of one or both of the commissioning couple.

2. Section 30(9) of the Human Fertilisation and Embryology Act 1990 (HF&E Act) allows for a parental order to be drawn up by simplifying the existing adoption provisions contained in the Adoption Act 1976 (as amended).

3. A list of conditions which have to be fulfilled before a parental order can be granted, together with the full text of Section 30 of the HF&E Act 1990, is set out in **ANNEX 1**.

4. Parental order proceedings are to be held in private and a guardian ad litem (see Glossary of Terms - **ANNEX 3**) appointed in every case.

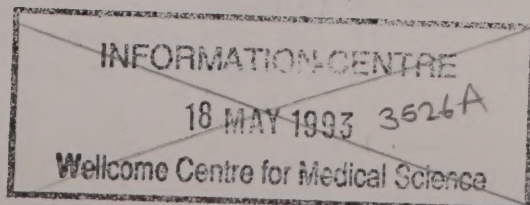
5. The functions and duties of the guardian ad litem are to be set out in court rules which are to be made under the provisions of adoption legislation applied with modifications to proceedings under section 30. The court rules are being prepared by the Lord Chancellor's Department for England and Wales and by the Northern Ireland Supreme Court Rules Committee for Northern Ireland.

**THE REGULATIONS**

6. The regulations together with explanatory notes are to be found in **ANNEX 2**. A Glossary of Terms can be found at **ANNEX 3**.

7. Regulations relating to England and Wales are to be found in Schedule 1 and for Northern Ireland in Schedule 2. Regulations for Scotland have been prepared separately and will be subject to a separate consultation exercise. For further details see below.

8. There are two areas which have been omitted from this consultation document as work has not been completed. The first concerns nationality. The intention will be that a parental order should have the same effect in nationality terms as an Adoption Order made by a court in the United Kingdom. The second area concerns the position on birth registration in Northern Ireland. The intention will be that Article 50 of the Adoption (Northern Ireland) Order 1987 will be modified in the same way that section 50 of the Adoption Act 1976 has been modified in these draft regulations.





## ENGLAND AND WALES

9. The Children and Young Persons, Parental Orders For Gamete Donors Regulations 1993, Schedule 1, will modify the provisions of the Adoption Act 1976 in respect of parental orders made in England and Wales and applications for such orders.

## NORTHERN IRELAND

10. Schedule 2 of these regulations will modify the provisions of the Adoption (Northern Ireland) Order 1987 in respect of parental orders made in Northern Ireland and applications for such orders.

## SCOTLAND

11. Scotland are introducing separate regulations the Parental Orders to Gamete Donors (Scotland) Regulations. These regulations are subject to a separate consultation exercise. Details can be obtained from:

Ms Gillian Patterson  
Scottish Home and Health Department  
St Andrews House  
Regent Road  
Edinburgh EH1 3DE TEL: 031-244-2457

## COMMENCEMENT

12. These regulations will be amended as appropriate in the light of comments received, they will then be considered by both Houses of Parliament. The regulations will come into effect 28 days after they have been approved by Parliament.

## CONSULTATION

Comments on these draft regulations are invited by 2nd July 1993.

Please send your comments to:

Ms J Elliott  
Health Promotion (Administration) Division  
Department of Health  
Room 418  
Wellington House  
133-135 Waterloo Road  
London SE1 8UG

Further copies can be obtained from the same address or by telephoning 071-972-4192.



## **ANNEX 1**

### **CONDITIONS WHICH HAVE TO BE FULFILLED BEFORE A PARENTAL ORDER CAN BE GRANTED**

1.1 The child must be genetically related to at least one of the commissioning couple.

1.2 The surrogate parents have consented to the making of a parental order (or are incapable or cannot be found) no earlier than six weeks after the birth of the child.

1.3 The commissioning couple are married to each other and both are aged 18 or over.

1.4 The commissioning couple have made the application within six months of section 30 coming into force. After this, applications must be made within six months of the child's birth.

1.5 No money other than expenses has been paid in respect of the surrogacy arrangement unless authorised by a court.

1.6 The child is living with the commissioning couple.

1.7 The commissioning couple are domiciled in the United Kingdom, the Channel Islands or the Isle of Man.



## SECTION 30 OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990

The purpose for which these regulations are made are set out in Section 30 of the Human Fertilisation and Embryology Act 1990 and reads as follows:

" 30 (1). The court may make an order providing for a child to be treated in law as the child of the parties to a marriage (referred to in this section as "the husband" and "the wife") if-

(a) the child has been carried by a woman other than the wife as the result of the placing in her of an embryo or sperm and eggs or her artificial insemination,

(b) the gametes of the husband or the wife, or both, were used to bring about the creation of the embryo, and

(c) the conditions in subsections (2) to (7) below are satisfied.

(2). The husband and the wife must apply for the order within six months of the birth of the child or, in the case of a child born before the coming into force of this Act, within six months of such coming into force.

(3). At the time of the application and of the making of the order-

(a) the child's home must be with the husband and the wife, and

(b) the husband or the wife, or both of them, must be domiciled in a part of the United Kingdom or in the Channel Islands or the Isle of Man.

(4). At the time of the making of the order both the husband and the wife must have attained the age of eighteen.

(5). The court must ~~be~~ satisfied that both the father of the child (including a person who is the father by virtue of section 28 of this Act), where he is not the husband, and the woman who carried the child have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(6). Subsection (5) above does not require the agreement of a person who cannot be found or is incapable of giving agreement and the agreement of the woman who carried the child is ineffective for the purposes of that subsection if given by her less than six weeks after the child's birth.



(7). The court must be satisfied that no money (other than for expenses reasonably incurred) has been given or received by the husband or the wife for or in consideration of-

(a) the making of the order,

(b) any agreement required by subsection (5) above,

(c) the handing over of the child to the husband or the wife, or

(d) the making of any arrangements with a view to the making of the order,

unless authorised by the court.

(8). For the purpose of an application under this section-

(a) in relation to England and Wales, section 92(7) to (10) of, and Part I of Schedule 11 to, the Children's Act 1989 (jurisdiction of courts) shall apply for the purposes of this section to determine the meaning of "the court" as they apply for the purposes of that Act and proceedings on the application shall be "family proceedings" for the purposes of that Act,

(b) in relation to Scotland, "the court" means the Court of Session or the sheriff court of the sheriffdom within which the child is, and

(c) in relation to Northern Ireland, "the court" means the High Court or any county court within whose division the child is.

(9). Regulations may provide-

(a) for any provision of the enactments about adoption to have effect, with such modifications (if any) as may be specified in the regulations, in relation to orders under this section, and applications for such orders, as it has effect in relation to adoption, and applications for adoption orders, and

(b) for references to any enactment to adoption, an adopted child or an adoptive relationship to be read (respectively) as references to the effect of an order under this section, a child to whom such an order applies and a relationship arising by virtue of the enactments about adoption, as applied by the regulations, and for similar expressions in connection with adoption to be read accordingly,

and the regulations may include such incidental or supplemental provision as appears to the Secretary of State necessary or desirable in consequence of any provision made by virtue of paragraph (a) or (b) above.

(10). In this section "the enactments about adoption" means the Adoption Act 1976, the Adoption (Scotland) Act 1978 and the Adoption (northern Ireland) Order 1987.

(11). Subsection (1)(a) above applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination."



## ANNEX 2

### REGULATIONS

1. The regulations are provided in two separate schedules:

a. **Schedule 1 England and Wales** which contains provisions of the Adoption Act 1976 which have been changed to take account of parental orders and applications for parental orders;

b. **Schedule 2 Northern Ireland** which contains provisions of the Adoption (Northern Ireland) Order 1987 which have been modified to take account of parental orders and applications for parental orders.

2. Column 1 of each Schedule shows the sections of the Adoption Law that these regulations will modify.

3. Column 2 of the Schedule shows the modifications.

### EXPLANATORY NOTE

4. Opposite each page of the Schedules a page is headed:

#### "EXPLANATORY NOTE - NOT PART OF THE REGULATIONS"

This page describes the changes to each section of the Adoption Act 1976 (Schedule 1) and the Adoption (Northern Ireland) Order 1987 (Schedule 2) and the effect of each change.







Draft Regulations laid before Parliament under section 45(4) of the Human Fertilisation and Embryology Act 1990 (a) for approval by resolution of each House of Parliament.

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S T A T U T O R Y     I N S T R U M E N T S

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1993 No.

CHILDREN AND YOUNG PERSONS

THE PARENTAL ORDERS FOR GAMETE DONORS REGULATIONS 1993

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Made .....  
Coming into force ....[.....]

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Whereas a draft of this instrument was laid before Parliament in accordance with section 45(4) of the Human Fertilisation and Embryology Act 1990 (a) and approved by resolution of each House of Parliament.

The Secretary of State for Health in exercise of the powers conferred on her by sections 30(9) <sup>and 45</sup> of the Human Fertilisation and Embryology Act 1990 and of all other powers enabling her in that behalf hereby makes the following Regulations:-

Citation, commencement, interpretation and extent

1.-(1) These Regulations may be cited as the Parental Orders for Gamete Donors Regulations 1993 and shall come into force on [            ].

(2) In these Regulations unless the context otherwise requires -

"the 1990 Act" means the Human Fertilisation and Embryology Act 1990;

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(a) 1990 c.37.



"the 1976 Act" means the Adoption Act 1976(a) and references to sections are to sections under the 1976 Act except where otherwise indicated;

"the Order" means the Adoption (Northern Ireland) Order 1987(b) and references to Articles are to Articles of the Order.

"husband and wife" means the persons who may apply for a parental order, where one or the other or both have supplied their own gametes which have been placed in a woman other than the wife in accordance with the definition in section 30 of the 1990 Act;

"parental order" means an order under section 30 of the 1990 Act (Parental orders in favour of gamete donors) providing for a child to be treated in law as a child of the parties to a marriage and this definition shall also have effect for the purposes of any provisions of the 1976 Act and 1987 Order having effect with modifications as applied by these Regulations.

(3) These Regulations extend to England and Wales and Northern Ireland.

Application of Adoption Act 1976 provisions with modifications to parental orders and applications for such orders

2. The provisions of the 1976 Act set out in column 1 of Schedule 1 to these Regulations shall have effect with the modifications set out in column 2 of that Schedule in respect of parental orders made in England and Wales and applications for such orders.

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(a) 1976 c.36

(b) 1987 No.2203 (N.I. 22)

Application of Adoption (Northern Ireland) Order 1987  
provisions with modifications to parental orders and  
applications for such orders

3. The provisions of the 1987 Order set out in column 1 of Schedule 2 to these Regulations shall have effect with the modifications set out in column 2 of that Schedule in respect of parental orders made in Northern Ireland and applications for such orders.



**EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

**SCHEDULE 1 (ENGLAND AND WALES)**

**1. Applications by Gamete Donors for a parental order**

**(a) Section 6 - (duty to promote the welfare of the child)**

**Changes to section 6:**

The words "adoption of a child" are substituted by "application for a parental order" and the words "or adoption agency" are omitted.

**Effect of the changes:**

This section emphasises the need to consider the welfare of the child who is the subject of a parental order application. Although the child will be genetically related to at least one of the commissioning couple, a court when considering granting a parental order, must give consideration to the need to safeguard and promote the welfare of the child in question

**(b) Section 12(1) to (3) - (adoption orders)**

**Changes to section 12(1) to (3):**

The words "an adoption order " are substituted by "a parental order" and the words "adopters" are substituted by "husband and wife as specified in the Human Fertilisation and Embryology Act 1990". These changes apply to section 12(1), 12(2) and 12(3) only.

**Effect of the changes:**

12(1) A parental order is the means by which an authorised court gives parental rights and duties relating to a child, to the commissioning couple.

12(2) The parental order comes into effect from the date it is made. It cannot be backdated.

12(3) Immediately before the parental order is made any parental rights or duties relating to the child, of a surrogate mother or of a surrogate mother and her husband or partner, are extinguished.

## SCHEDULES

### SCHEDULE 1

#### Application of Adoption Act 1976 provisions with modifications to parental orders and applications for such orders

##### column 1

##### column 2

(Sections of the 1976  
Act having effect)

(Modifications)

#### 1. Applications by Gamete Donors for a parental order

(a) Section 6 (duty to  
promote the welfare of  
the child)

(i) As if for the words  
"adoption of a child" there were  
substituted "application for a  
parental order"; and

(ii) as if the words "or  
adoption agency" were omitted.

(b) Section 12(1) to  
(3) (a) (adoption  
orders)

(i) As if for the words "an  
adoption order" on each occasion  
they appear there were  
substituted the words "a parental  
order"; and

(ii) as if for the words  
"adopters" there were substituted  
the words "husband and wife as  
specified in Human Fertilisation  
and Embryology Act 1990".

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(a) Section 12(1), (2) and (3) have been amended by section 88(1) (c.41) of and paragraph 3 of Schedule 10 to the Children Act 1989.



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### (c) Section 24 - (restrictions on making adoption orders)

#### **Changes to section 24:**

The words "an adoption order" are substituted by "a parental order", the words "a British adoption order" are substituted by "such an order" and the words "section 57" that appear in section 24(2) are replaced by "section 30(7) of the Human Fertilisation and Embryology Act 1990".

#### **Effect of the changes:**

This refers to the fact that the court will not hear an application for a parental order where a previous application has been rejected unless there is a good reason.

Good Reasons are listed as:

1. The court, when refusing the original application, ruled that this section should not apply to a second application; or
2. It appears to the court that a change of circumstances allow the court to proceed with the application.

A parental order cannot be made unless the court is satisfied that no money or other benefit (other than expenses - section 30(7) of the HF&E Act) has changed hands between the surrogate parent(s) and the commissioning couple.

### (d) Section 25 - (interim orders)

#### **Changes to section 25:**

The words "Where on an application for an adoption order the requirements of sections 16(1) and 22(1) are complied with" are substituted with "On an application for a parental order"

#### **Effect of the changes:**

The court may postpone determination of the application for a parental order for a period not exceeding two years and give an interim order to the applicants. This situation is likely to be very rare.

(c) Section 24 (a)  
(restrictions on making  
adoption orders)

(i) As if for the words "an  
adoption order" on each occasion  
they appear there were  
substituted the words "a parental  
order"; and

(ii) as if for the words "a  
British adoption order" there  
were substituted the words "such  
an order"; and

(iii) as if for the words in  
subsection (2), "section 57"  
there were substituted the words  
"section 30(7) of the Human  
Fertilisation and Embryology Act  
1990".

(d) Section 25 (b)  
(interim orders)

As if for the words "Where on an  
application for an adoption order  
the requirements of sections  
16(1) and 22(1) are complied  
with" there were substituted the  
words "On an application for a  
parental order".

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(a) Section 24(2) was amended by section 9 of and paragraph 32  
of Schedule 2 to the Health and Social Services and Social  
Security Adjudications Act 1983 (c.41).

(b) Section 25(1) was amended by section 88(1) of and paragraph  
11 of Schedule 10 to the Children Act 1989.



**EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

**(e) Section 27(1) - (restrictions on removal while an application is pending)**

**Changes to section 27(1):**

The words "an adoption order is pending in a case where the parent or guardian of the child has agreed to the making of an adoption order (whether or not he knows the identity of the applicant)" are substituted by "a parental order is pending"

**Effect of the changes:**

In order to ensure the care and protection of a child who is the subject of a parental order application, the child will remain in the custody of the commissioning couple making the application for a parental order.

If agreement to the parental order is contested the child cannot be removed by the birth parents or guardian without the leave of the court.

**(f) Section 29 - (return of a child taken away in breach of section 27 or 28 of the 1976 Act)**

**Changes to section 29:**

The words in parts (a), (b) and (c) of sections 29(1) and 29(2) are substituted by:

in part (a) " section 27 as applied with modifications by regulation 2 of and paragraph 1(e) of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993"

in part (b) SCOTS PROVISION

in part (c) Article 28 of the Adoption (Northern Ireland) Order 1987 as applied with modifications by regulation 3 of and paragraph 1(e) of Schedule 2 to the Parental Order for Gamete Donors Regulations 1993.

**Effect of the changes:**

This concerns a situation where the child has been taken away from the commissioning couple's home without the leave of the court or permission from the commissioning couple, the court will have the power to order the return of the child and take any further action necessary to achieve this.

(e) Section 27(1)  
(a) (restrictions on  
removal while  
application is pending)

As if for the words "an adoption  
order is pending in a case where  
a parent or guardian of the child  
has agreed to the making of the  
adoption order, (whether or not  
he knows the identity of the  
applicant)" there were  
substituted the words "a parental  
order is pending".

(f) Section 29 (b)  
(return of a child taken  
away in breach of  
section 27 or 28 of the  
1976 Act)

As if for paragraph (a) to (c),  
of subsections (1) and (2) there  
were substituted the words  
"(a) section 27 as applied with  
modifications by regulation 2 of  
and paragraph 1(e) of Schedule 1  
to the Parental Orders for Gamete  
Donors Regulations 1993,

(b) [Scots provision]

(c) Article 28 of the Adoption  
(Northern Ireland) Order 1987 as  
applied with modifications by  
regulation 3 of and paragraph  
1(e) of Schedule 2 to the  
Parental Orders for Gamete Donors  
Regulations 1993."

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(a) Section 27(1) has been amended by section 9 of the Health  
and Social Services and Social Security Adjudications Act 1983  
and section 88(1) of and Paragraph 12 of Schedule 10 to the  
Children Act 1989.

(b) Section 29 has been amended by section 9 of and paragraphs  
34 and 60 of Schedule 2 to the Health and Social Services and  
Social Security Adjudications Act 1983 and section 88(1) of and  
paragraph 15 of Schedule 10 to the Children Act 1989.



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### 2. Effect of a parental order

#### Section 39(1)(a), (2), (4) and (6) - (status conferred by adoption)

##### **Changes to section 39:**

The following changes affect section 39, parts (1)(a), (2), (4) and (6) only. These changes are:

to substitute the words "an adopted child" for "a child who is the subject of a parental order" and "adopters" and "adopter" for "persons who obtain the parental order", each time they appear;

to omit the words in section 39(2), "or adopter" and "subject to subsection 3";

in section 39(6) substitute the word "adoption" for "parental order" and omit the words "Subject to the provisions of this Part" and "or after 31st December 1975"

##### **Effect of the changes:**

39(1)(a) this ensures that a child who is the subject of a parental order is treated in law, as the child of the marriage of the couple who obtain the parental order (whether the child was born before or after the marriage took place).

39(2) this means that a child who is the subject of a parental order is treated as if he were the child of the couple who obtain the parental order and not the child of anyone else.

39(4) this section means that a child who is the subject of a parental order is not illegitimate.

39(6) This section means that the provisions of section 39 will apply to the making of enactments or instruments that have been passed or made before a parental order has been made e.g. wills, disposition of property, inheritance of title, peerage etc. The section also applies to these issues occurring after the parental order has been made.

## 2. Effect of a parental order

Section 39(1)(a), (2),  
(4) and (6) (status  
conferred by adoption)

(i) As if for the words "an adopted child" there were substituted, on each occasion they appear, the words "a child who is the subject of a parental order"; and

(ii) as if for the words "adopters" and "adopter" on each occasion they appear, there were substituted the words "persons who obtain the parental order"; and

(iii) as if the words in section 39(2) "or adopter" and "subject to subsection (3)," were omitted; and

(iv) as if for the word "adoption" in section 39(6) there were substituted the words "parental order"; and

(v) as if the words in section 39(6) "Subject to the provisions of this Part," and "or after 31st December 1975" were omitted.



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### 3. Interpretation of certain events consequent upon the making of a parental order.

#### (a) Section 42 - (rules of construction for instruments concerning property)

##### **Changes to section 42:**

In Section 42(2) the words "section 39(1)" are substituted by "Section 39(1)(a) as applied with modifications by regulation 2 of and paragraph 2 of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993"; also in section 42(2) the words "of the adoptive parent or parents" are substituted by "in respect of whom a husband or wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 have obtained a parental order".

In section 42(2)(a) and 42(4) the words "adopted child" are substituted by "child the subject of a parental order", also in section 42(4) the words "adoption" are substituted by "making of the parental order".

In section 42(2)(b) the words "adopted" are substituted by "in respect of whom parental orders were made".

In section 42(5) the word "adopt" is substituted by "obtain a parental order in respect of".

##### **Effect of section 42:**

This section clarifies the position on the giving of gifts such as a legacy in a will. For example, if a grandmother of a parental order child (i.e. a parent of the applicant for a parental order) left a legacy to her grandchildren who were living at her death, the parental order child would only receive the legacy when the parental order is made, regardless of whether the child was already alive at the grandmother's death.

Alternatively, if the grandmother left a bequest to her daughter until she had a child and then the bequest was to pass to the child, the child would be entitled to the bequest from the date of the parental order and not from the date of his/her birth.

3. Interpretation of certain events consequent upon the making of a parental order

a) Section 42 (rules of construction for instruments concerning property)

(i) As if for the words in section 42(2) "section 39(1)" there were substituted the words "Section 39(1)(a) as applied with modifications by regulation 2 of and paragraph 2 of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993"; and

(ii) as if for the words in section 42(2), "of the adoptive parent or parents" there were substituted the words "in respect of whom a husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 have obtained a parental order"; and

(iii) as if for the words in sections 42(2)(a) and 42(4) "adopted child" there were substituted the words "child the subject of the parental order"; and

(iv) as if for the words in section 42(2)(b) "adopted" there were substituted the words "in respect of whom parental orders were made"; and



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### (b) Section 44 - (property devolving with peerage)

#### **Changes to section 44:**

The words "an adoption" are substituted by "the making of the parental order"

#### **Effect of the changes:**

This section will prevent a child who is the subject of a parental order from inheriting a peerage, dignity or title of honour and from succeeding to property connected with any peerage etc unless this has been expressly provided for in the instrument of transfer (see also section 42 above).

### (c) Section 45 - (protection of trustees and personal representatives)

#### **Changes to section 45:**

In section 45(1) the word "adoption" is substituted by "parental order".

#### **Effect of the changes:**

A trustee or personal representative is not under any duty, by virtue of the law relating to trusts or to the administration of estates, to enquire, before distributing any property, whether a parental order has been made.

If a conveyance or distribution of property has been made by a trustee or personal representative who has no knowledge that a parental order exists then that person is not liable to any other person.

This section does not prejudice the right of a person to pursue any legal remedy if a property to which he feels he has some entitlement has been distributed to another person

### (d) Section 46 - (meaning of "disposition")

#### **Changes to section 46:**

Each time the words "this part" appear in the section they are substituted by "the application of sections 39,42,44,45 and 47 as modified by regulation 2 of and paragraphs 3(a),(b),(c) and (e) respectively of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993".

#### **Effect of the changes:**

This section is concerned with various matters relating to the disposition of property.

(a) Section 42 (continued)

(v) as if for the word in section 42(4) "adoption" there were substituted the words "making of the parental order"; and

(vi) as if in section 42(5) for the word "adopt" there were substituted the words "obtain a parental order in respect of".

(b) Section 44  
(property devolving with peerages etc)

As if for the words "an adoption" on each occasion they appear there were substituted the words "the making of the parental order".

(c) Section 45  
(protection of trustees and personal representatives)

As if for the word in section 45(1) "adoption" there were substituted the words "parental order".

(d) Section 46 (meaning of "disposition")

As if for the words "this Part" each time they appear there were substituted the words "the application of sections 39, 42, 44, 45 and 47 as modified by regulation 2 of and paragraphs 2 and 3(a), (b), (c) and (e) respectively of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993".



EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

4. Registration

Section 50 (Adopted Children Register)

**Changes to section 50:**

The words "Adopted Children Register" are substituted by the words "Parental Order Register " each time they appear in section 50.

Section 50(1) the words "such entries as may be directed to be made therein by adoption orders" are replaced by "entries relating to parental orders".

Section 50(2) the word "adoption" is substituted by the word "birth" and the words "of the adopted person" are omitted.

**Effect of the changes:**

50(1) Requires the Registrar General to maintain a Parental Order Register at the General Register Office, similar to the Adopted Children Register.

50(2) Provides for a certified copy of an entry in the Parental Order Register to be received as evidence of the birth of the child, in the same way as a certified copy of an entry in the Register of Births.

50(3) Requires the Registrar General to maintain an index of the Parental Order Register at the General Register Office; and to provide that any person is entitled to search the index and be supplied with a certified copy of an entry in the Register on the same basis as for the Register of Births.

#### 4. Registration

##### Section 50 (Adopted Children Register)

###### (a) subsection (1)

(i) As if for the words "Adopted Children Register" there were substituted the words "Parental Order Register"; and

(ii) as if for the words "such entries as may be directed to be made therein by adoption orders" there were substituted the words "entries relating to parental orders".

###### (b) subsection (2)

(i) As if for the words "Adopted Children Register" there were substituted the words "Parental Order Register";

(ii) as if for the word "adoption" there were substituted the word "birth"; and

(iii) as if the words "of the adopted person" were omitted.

###### (c) subsection (3)

As if for the words "Adopted Children Register" on each occasion they appear there were substituted the words "Parental Order Register".



EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

**Changes to section 50 (continued):**

Section 50(4) the word "adopted" is substituted by the word "Re-registered".

Section 50(5) the words "in accordance with section 51 or " are omitted and in paragraph 50(5)(c) the words "an adoption order" are substituted by "a parental order".

Section 50(7) the word "adoptions" is substituted by the words "parental orders" and the words "adoption orders " are substituted by the words "parental orders".

**Effect of the changes:**

50(4) Requires the Registrar General to maintain any other necessary records to link an entry in the Register of Births with a corresponding entry in the Parental Order Register.

50(5) Provides that the records referred to in section 50(4) above are not open to public inspection or search and that information from those records can only be supplied under an order of the court.

50(7) This provides for Schedule 1 of the Adoption Act 1976 to have effect, as modified by these Regulations, in relation to parental orders.

(d) subsection (4)

(i) As if for the words "Adopted Children Register" on each occasion they appear there were substituted the words "Parental Order Register"; and

(ii) as if for the word "Adopted" there were substituted the word "Re-registered".

(e) subsection (5)

(i) As if the words "in accordance with section 51 or" were omitted; and

(ii) as if for the words "an adoption order" in paragraph (c) there were substituted the words "a parental order".

(f) subsection (7)

(i) As if for the word "adoptions" there were substituted the words "parental orders"; and

(ii) as if for the words "adoption orders" there were substituted the words "parental orders".



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### 5. Prohibition against advertisements

#### Section 58 - (restriction against advertisements)

##### **Changes to section 58:**

Paragraphs (a), (b) and (c) of section 58(1) have been substituted by the following:

"(a) that a person is or may be willing to enter into an arrangement for the purpose of section 30 of the Human Fertilisation and Embryology Act 1990, or

(b) that a person is or may be willing to negotiate or facilitate the making of such an arrangement for that purpose"

In section 58(2) the words "this section" are substituted by "this section as applied with modifications by regulation 2 of and paragraph 4 of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1993".

##### **Effect of the changes:**

These regulations do not affect the prohibition against advertising contained in the Surrogacy Arrangements Act 1985.

These regulations will make it unlawful to publish an advertisement indicating that a person may be willing to enter into an arrangement for the purpose of section 30 or that a person may be willing to negotiate or facilitate such an arrangement.

A person who contravenes this provision is guilty of an offence and liable on summary conviction to a fine.

## 5. Prohibition against advertisements

Section 58 (restriction  
on advertisements)

(i) As if for paragraphs (a),  
(b) and (c) of section 58 (1)  
there were substituted the  
following paragraphs-  
"(a) that a person is or may be  
willing to enter into an  
arrangement for the purpose of  
section 30 of the Human  
Fertilisation and Embryology Act  
1990, or  
(b) that a person is or may be  
willing to negotiate or  
facilitate the making of such an  
arrangement for that purpose.";  
and

(ii) as if for the words in  
section 58(2) "this section"  
there were substituted the words  
"this section as applied with  
modifications by regulation 2 of  
and paragraph 4 of Schedule 1 to  
the Parental Orders for Gamete  
Donors Regulations 1993".



## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### 6. Procedure

#### (a) Section 61 - (evidence of agreement or consent)

##### **Changes to section 61:**

In section 61(1) the words "this Act" are substituted by "section 30 of the Human Fertilisation and Embryology Act 1990" and the words "(other than an order to which section 17(6) applies" are omitted.

Each time the word "rules" appears in section 61 the following words should be inserted after it "made under section 66(1) as applied with modifications by regulation 2 of and paragraph 5(e) of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993".

##### **Effect of the changes:**

This allows any agreement or consent required by section 30 of the HF&E Act to the making of a parental order, to be given in writing. If the document signifying agreement or consent is witnessed in accordance with the rules made under section 66(1) (as applied with modification by regulation 2 and paragraph 5(e) of Schedule 1 to these regulations) it is admissible as evidence without further proof of the signature of the person who signed it.

A document which has been witnessed according to the rules is presumed to be so witnessed on the date and at the place specified unless it is proved to the contrary.

#### (b) Section 64 - (proceedings to be in private)

##### **Changes to section 64:**

The words "under this Act" are substituted by "pursuant to section 30 of the Human Fertilisation and Embryology Act 1990"

##### **Effect of the changes:**

Proceedings concerning parental orders may be heard in private.

## 6. Procedure

(a) Section 61  
(evidence of agreement  
and consent)

(i) As if for the words "this  
Act" there were substituted the  
words "section 30 of the Human  
Fertilisation and Embryology Act  
1990"; and

(ii) as if the words "(other  
than an order to which section  
17(6) applies)" were omitted; and

(iii) as if after the word  
"rules" each time it appears  
there were inserted the words  
"made under section 66(1) as  
applied with modifications by  
regulation 2 of and paragraph  
5(e) of Schedule 1 to the  
Parental Orders for Gamete Donors  
Regulations 1993".

(b) Section 64(a)  
(proceedings to be in  
private)

As if for the words "under this  
Act" there were substituted the  
words "pursuant to section 30 of  
the Human Fertilisation and  
Embryology Act 1990".

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(a) Section 64 has been amended by section 73 of and Schedule 3  
to the Domestic Proceedings and Magistrates' Courts Act 1978  
(c.22).



EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

(c) Section 65(1) - (guardians ad litem)

**Changes to section 65(1):**

The words "an adoption order or an order freeing a child for adoption or an order under section 20 or 55" are substituted by the words "a parental order".

On each occasion after the word "rules" appears the following words are inserted "made under section 66(1) as applied with modifications by regulation 2 and paragraph 5(e) of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993"

In section 65(1)(b) the words "reporting officer" are substituted by "guardian ad litem" and the word "adoption" is substituted by the words "the making of a parental order".

**Effect of the changes:**

This makes provision for the appointment of a guardian ad litem in all parental order cases. The duties of the guardian ad litem are intended to safeguard the interests of the child.

The guardian ad litem will act for the purpose of witnessing agreements and performing other duties as the rules under section 66(1) (as applied with modification by regulation 2 and paragraph 5(e) of schedule 1 of these regulations).

(c) Section 65(1)  
(guardians ad litem)

(i) As if for the words "an adoption order or an order freeing a child for adoption or an order under section 20 or 55" there were substituted the words "a parental order"; and

(ii) as if after the word "rules" on each occasion it appears there were inserted the words "made under section 66(1) as applied with modification by regulation 2 and paragraph 5(e) of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993"; and

(iii) as if for the words in section 65(1)(b) "reporting officer" there were substituted the words "guardian ad litem"; and

(iv) as if for the word in section 65(1)(b) "adoption" there were substituted the words "the making of the parental order".



**EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

**(d) Section 65A - (panels for selection of guardians ad litem)**

**Changes to section 65A:**

The words "rules made under section 65" are substituted by the words "rules made under section 66(1) as applied with modification by regulation 2 of and paragraph 5(e) of Schedule 1 to the Parental Orders for Gamete Donors Regulations 1993".

In section 65A(1) and (2) the words "and reporting officers" are omitted; in section 65A(3) the words "or reporting officer" are omitted and in section 65A(4) the words "and reporting officer" are omitted.

**Effect of the changes:**

This makes provision for the establishment of panels of persons from whom guardian ad litem can be selected.

**(e) Section 66(1) - (rules of procedure)**

**Changes to section 66(1):**

The first time the words "this Act" appears in this section they are substituted by the words "section 30 of the Human Fertilisation and Embryology Act 1990" further references to "this act" are substituted by "the said section 30".

**Effect of the changes:**

Rules of court are necessary for any matter prescribed under section 30 of the Human Fertilisation and Embryology Act. These are a matter for the Lord Chancellor.

**(f) Section 68 - (offences by bodies corporate)**

**Changes to section 68:**

The words "this Act" are substituted by "section 30 of the Human Fertilisation and Embryology Act 1990"

**Effect of the changes:**

Any offence committed under section 30 of the HF&E Act by a limited company which is proved to have been committed with consent or connivance by any director, manager, member of a committee, secretary or other officer or body, that person as well as the limited company are liable for prosecution.

(d) Section 65A(a)  
(panels for selection of  
guardians ad litem)

(i) As if for the words "rules  
made under section 65" there were  
substituted the words "rules made  
under section 66(1) as applied  
with modification by regulation 2  
of and paragraph 5(e) of Schedule  
1 to the Parental Orders for  
Gamete Donors Regulations 1993 ";  
and

(ii) as if the words "and  
reporting officers" in Section  
65A(1) and (2), "or reporting  
officer" in section 65A(3) and  
"and reporting officer" in  
section 65A(4) were omitted.

(e) Section 66(1)  
(rules of procedure)

As if for the words "this Act" on  
the first occasion they appear  
there were substituted the words  
"section 30 of the Human  
Fertilisation and Embryology Act  
1990" and on the subsequent  
occasions they appear there were  
substituted the words "the said  
section 30".

(f) Section 68  
(offences by bodies  
corporate)

As if for the words "this Act"  
there were substituted the words  
"section 30 of the Human  
Fertilisation and Embryology Act  
1990".

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(a) Section 65A was inserted by section 88 of and paragraph 29  
of Schedule 10 to the Children Act 1989 and amended by section  
116 of and paragraph 7 of Schedule 16 to the Courts and Legal  
Services Act 1990 (c.41).

**EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

**(g) Section 69 - (service of notices etc)**

**Changes to section 69:**

The words "this Act" are substituted by the words "section 30 of the Human Fertilisation and Embryology Act 1990"

**Effect of the changes:**

Any notice or information required to be given under section 30 of the HF&E Act may be sent by post.

**(h) Section 72 - (interpretation)**

This will contain the definitions of the terms such as "parental orders" and "husband and wife". These terms are explained in the glossary at ANNEX 3.



(g) Section 69 (Service of notices etc) As if for the words "this Act" there were substituted the words "section 30 of the Human Fertilisation and Embryology Act 1990".

[(h) section 72 [definitions of parental order, husband and wife, parent etc]  
(interpretation)]

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

7. Registration Provisions in Schedule 1 (Registration of Adoptions)

**Changes to paragraph 1 of Schedule 1:**

Paragraph 1(1) The words "adoption order" are substituted by the words "parental order"; the words "Adopted Children Register" are replaced by the words "Parental Order Register.

Paragraph 1(3) The words "an application to a court for an adoption order" are substituted for the words "application to a court for a parental order"; the words beginning with "in respect of a child..." and ending with " ....the time in force)" are omitted; the words "an adoption order" are substituted by the words "a parental order" and the word " "Adopted" " is substituted by the word " "Re-registered" ".

Paragraph 1(4) The words "the subject of an adoption order" are substituted by the words "the subject of a parental order".

**Effect of the changes:**

Paragraph 1(1) Requires that every parental order must include a direction to the Registrar General to make an entry in the Parental Order Register in such form as the Registrar General may specify by regulations.

Paragraph 1(3) Provides that where there is an entry in the Register of Births in respect of the child, the parental order must include a direction to the Registrar General to mark that entry with the word "Re-registered".

Paragraph 1(4) Provides that where an adoption order is made in respect of a child who is the subject of a parental order, the adoption order must include a direction to the Registrar General to mark the entry in the Parental Order Register with the word "Adopted".

7. Registration Provisions in Schedule 1

Schedule 1 (Registration of  
Adoptions)

- (a) paragraph 1(1)
- (i) As if for the words "adoption order" there were substituted the words "parental order"; and
  - (ii) as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register".
- (b) paragraph 1(3)
- (i) As if for the words "application to a court for an adoption order" there were substituted the words "application to a court for a parental order";
  - (ii) as if the words beginning with "in respect of a child" and ending with "the time in force)" were omitted;
  - (iii) as if for the words "an adoption order" there were substituted the words "a parental order"; and
  - (iv) as if for the word "'Adopted'" there were substituted the word "'Re-registered'".
- (c) paragraph 1(4)
- (i) As if for the words "the subject of an adoption order" there were substituted the words "the subject of a parental order";



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **Changes to paragraph 1 of Schedule 1 (continued):**

Paragraph 1(4) The words "under this Act or any enactment at the time in force" were omitted; the words "Adopted Children Register" are replaced by "Parental Order Register" and the word " "Re-adopted" " is substituted by the word " "Adopted" ".

Paragraph 1(5) The words "an adoption order" are substituted by the words "a parental order".

### **Effect of the changes:**

Paragraph 1(4) Please see the previous page.

Paragraph 1(5) Requires a prescribed officer of the court to notify the Registrar General when a parental order has been made and the Registrar General to comply with the directions in the order.

c) Paragraph 1(4) continued

(ii) as if the words "under this Act or any enactment at the time in force" were omitted;

(iii) as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register"; and

(iv) as if for the word ""Re-adopted"" there were substituted the word ""Adopted"".

(d) paragraph 1(5)

As if for the words "an adoption order" there were substituted the words "a parental order".

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

**Changes to Paragraph 2 of Schedule 1:**

Paragraph 2(1) After the words "an adoption order" the words "or a parental order" are inserted. After the words "Adopted Children Register" the words "or a parental order" are inserted. The words "or, as the case may be, re-adopted "Re-adopted (Scotland)" " are substituted by the words ", "Re-adopted (Scotland)" or "Re-registered (Scotland)", as the case may require". The words "the adoption order" are substituted by the words "parental orders" each time they appear.

Paragraph 2(2) Immediately after the word "adoptions" the words "or a register of parental orders" were inserted. The word "relates" is substituted by the words "or the Parental Order register relates, or that a parental order has been made in that country in respect of such a child". The words "or "Re-adopted"" are substituted by the words ", "Re-adopted" or "Re-registered"".

Paragraph 2(3) The words "the order" are substituted by the words "an order referred to in sub-paragraph (2) of this paragraph".

**Effect of the changes:**

Paragraph 2(1) Provides that where the Registrar General for Scotland notifies the Registrar General that an adoption order or parental order has been made in Scotland, an entry in respect of the child in the Parental Order Register or in the Register of Births must be marked accordingly as "Adopted (Scotland)" or "Re-registered (Scotland)".

Paragraph 2(2) This paragraph allows for a similar provision as in paragraph 2(1) above, to be made in the case of an adoption order or a parental order made in Northern Ireland, the Isle of Man or the Channel Islands.

Paragraph 2(3) This paragraph requires that when the Registrar General is notified that an adoption order or a parental order referred to in paragraph 2(2) above has been quashed or revoked, the marking of the entry in the Parental Order Register or the Register of Births must be cancelled.



(e) paragraph 2(1)

(i) As if immediately after the words "an adoption order" there were inserted the words "or a parental order";

(ii) as if immediately after the words "Adopted Children Register" there were inserted the words "or the Parental Order Register";

(iii) as if for the words "or, as the case may be, "Re-adopted (Scotland)" there were substituted the words ", "Re-adopted (Scotland)" or "Re-registered (Scotland)", as the case may require"; and

(iv) as if for the words "the adoption order" on each occasion they appear there were substituted the words "that order".

(f) paragraph 2(2)

(i) As if immediately after the word "adoptions" there were inserted the words "or a register of parental orders";

(ii) as if for the word "relates" there were substituted the words "or the Parental Order Register relates, or that a parental order has been made in that country in respect of such a child"; and

(iii) as if for the words "or "Re-adopted"" there were substituted the words ", "Re-adopted" or "Re-registered"".

(g) paragraph 2(3)

As if for the words "the order" there were substituted the words "an order referred to in sub-paragraph (2) of this paragraph".

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

**Changes to Paragraph 4 of Schedule 1:**

Paragraph 4(1) The words "an adoption order" are substituted by the words "a parental order"; the words "adopter or of the adopted person" are substituted by " husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 or of the child who is the subject of the parental order".

Paragraph 4(1)(a) The words "adopter or the adopted person" are substituted by "husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 or the child who is the subject of the parental order"; the words "given to the adopted person" are substituted by the words "given to the child". The words "or taken by him" are omitted and the words "Adopted Children Register" are substituted by "Parental Order Register".

Paragraph 4(1)(b) The words "Adopted Children Register" are substituted by "Parental Order Register" and the words "or (4)" are omitted.

**Effect of the changes:**

This paragraph allows the court which made the parental order to correct any error in the particulars contained in the order; to revoke any direction for making an entry in the Register of Births or Parental Order Register if the direction was wrongly included in the order; and to amend the name of the child as specified in the order if a new name was given to the child within one year of the date of the order.

(h) paragraph 4(1)

(i) As if for the words "an adoption order" there were substituted the words "a parental order";

(ii) as if for the words "adopter or of the adopted person" there were substituted the words "husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 or of the child who is the subject of the parental order";

(iii) in sub-paragraph (1)(a) -

- as if for the words "adopter or the adopted person" there were substituted the words "husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 or the child who is the subject of the parental order",
- as if for the words "given to the adopted person" there were substituted the words "given to the child",
- as if the words "or taken by him," were omitted,
- as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register"; and

(iv) in sub-paragraph (1)(b) -

- as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register",



EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

**Changes to Paragraph 4 of Schedule 1 (continued):**

Paragraphs 4(2), (3) and (4) - the words "an adoption order" are substituted by the words "a parental order" and the words "Adopted Children Register" are substituted by the words "Parental Order Register" each time they appear in these paragraphs.

**Effect of the changes:**

Paragraph 4(2) This requires a prescribed officer of the court to notify the Registrar General when a parental order is amended or a direction in it revoked, and the Registrar General to amend the entry in the Parental Order Register or cancel the marking of an entry in the Register or the Register of Births.

Paragraph 4(3) This requires the court to give directions to the Registrar General, where a parental order is quashed, to cancel any entry in the Parental Order Register and the marking of an entry in the Register or in the Register of Births.

Paragraph 4(4) This requires that, where a parental order has been amended, any certified copy of an entry in the Parental Order Register must be a copy of the entry as amended, without reproducing any marking relating to the amendment or anything which has been cancelled by the amendment.

- as if the words "or (4)"  
were omitted.

(i) paragraph 4(2)

(i) As if for the words "an adoption order" there were substituted the words "a parental order"; and

(ii) as if for the words "Adopted Children Register" on each occasion they appear there were substituted the words "Parental Order Register".

(j) paragraph 4(3)

(i) As if for the words "an adoption order" on each occasion they appear there were substituted the words "a parental order"; and

(ii) as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register".

(k) paragraph 4(4)

(i) As if for the words "an adoption order" there were substituted the words "a parental order"; and

(ii) as if for the words "Adopted Children Register" there were substituted the words "Parental Order Register".





## **SCHEDULE 2**

### **NORTHERN IRELAND**

## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### SCHEDULE 2 (NORTHERN IRELAND)

#### 1. Applications by Gamete Donors for a parental order

##### (a) Article 9 - (duty to promote the welfare of the child)

##### Changes to Article 9

The words "the adoption of a child" are substituted by "the application for a parental order", the words "adoption, or adoption by a particular person or persons" are substituted by "the granting of such an order to the husband and wife" and the words "or adoption agency" are omitted.

##### Effect of the changes:

This Article emphasises the need to consider the welfare of the child who is the subject of a parental order application. Although the child will be genetically related to at least one of the commissioning couple, a court when considering granting a parental order, must give consideration to the need to safeguard and promote the welfare of the child in question.

SCHEDULE 2

Application of Adoption (Northern Ireland) Order 1987  
provisions with modifications to parental orders and  
applications for such orders

column 1

column 2

(article of the 1987  
Order having effect)

(modification)

1. Applications by gamete donors for a parental order

(a) Article 9 (duty to  
promote the welfare of  
the child)

(i) As if for the words "the  
adoption of a child" there were  
substituted "the application for  
a parental order"; and

(ii) as if for the words  
"adoption, or adoption by a  
particular person or persons"  
there were substituted "the  
granting of such an order to the  
husband and wife"; and

(iii) as if the words "or  
adoption agency" were omitted.



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(b) Article 12(1) to (3) - (adoption orders)**

#### **Changes to Article 12(1) to (3):**

The words "an adoption order" are substituted by "a parental order", the words "the adoption order" are substituted by "the parental order" and the Words "the adopters" are substituted by "the husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990". These changes apply to Articles 12(1), 12(2) and 12(3) only.

#### **Effect of the changes:**

Article 12(1): a parental order is the means by which an authorised court gives parental rights and duties relating to a child, to the commissioning couple.

Article 12(2): the parental order comes into effect from the date it is made, it cannot be backdated.

Article 12(3): the making of a parental order extinguishes any parental rights or duties relating to the child, of a surrogate mother or a surrogate mother and her husband or partner.

(b) Article 12(1) to  
(3) (Adoption orders)

(i) As if for the words in Article 12(1) "an adoption order" on each occasion they appear, there were substituted the words "a parental order"; and

(ii) as if for the words in Article 12(3)(b) "the adoption order" there were substituted the words "the parental order"; and

(iii) as if for the words "the adopters" there were substituted the words "the husband and wife as specified in section 30 Human Fertilisation and Embryology Act 1990".

## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(c) Article 25(1) and (2) - (restrictions on making adoption orders)**

#### **Changes to Article 25(1) and (2)**

The words "an adoption order" are substituted by "a parental order", the words "a British adoption order" are substituted by "such an order" and the words "Article 59" are substituted by "section 30(7) of the Human Fertilisation and Embryology Act 1990".

#### **Effect of the Changes:**

The court will not hear an application for a parental order where a previous application has been rejected unless there is a good reason.

Good reasons are listed as:-

1. The Court, when refusing the original application, ruled that this section should not apply to a second application; or
2. it appears to the court that a change of circumstances allow the court to proceed with the application.

A parental order cannot be made unless the court is satisfied that no money or other benefit (other than expenses - section 30(7) of the HF&E Act) has changed hands between the surrogate parent(s) and the commissioning couple.



(c) Article 25(1) and  
(2) (restrictions on  
making adoption orders)

(i) As if for the words "an  
adoption order" on each occasion  
they appear there were  
substituted the words "a parental  
order"; and

(ii) as if for the words "a  
British adoption order" there  
were substituted the words "such  
an order"; and

(iii) as if for the words in  
Article 25(2), "Article 59" there  
were substituted the words  
"section 30(7) of the Human  
Fertilisation and Embryology Act  
1990".

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

(d) Article 26 - (interim orders)

Changes to Article 26:

The words "where on an application for an adoption order the requirements of Articles 16(1) and 22(1) are complied with" are substituted with "On an application for a parental order"

Effect of the changes:

The court may postpone determination of the application for a parental order for a period not exceeding 2 years and give an interim order to the applicants. This situation is likely to be very rare.

(e) Article 28(1) - (restrictions on removal while application is pending)

Changes to Article 28(1):

The whole of paragraph (1) is substituted by "While an application for a parental order is pending a parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the actual custody of that person except with the leave of the court".

Effect of the changes:

In order to ensure the care and protection of a child who is the subject of a parental order application, the child will remain in the custody of the commissioning couple making the application for a parental order.

If agreement to the parental order is contested the child cannot be removed by the birth parents or guardian without the leave of the court.

(d) Article 26 (interim orders)

As if for the words "Where on an application for an adoption order the requirements of Articles 16(1) and 22(1) are complied with" there were substituted the words "On an application for a parental order".

(e) Article 28(1)  
(Restrictions on removal while application is pending),

As if for paragraph (1) of Article 28 there were substituted the following paragraph "While an application for a parental order is pending [no person or body, other than] a parent or guardian, is not entitled, against the will of the person with whom the child has his home, to remove the child from the actual custody of that person except with the leave of the court".



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

- (f) Article 30(1) and (2) - (return of a child taken away in breach of Articles 28 or 29 of the 1987 Order)

Changes to Article 30(1) and (2):

The words "Article 28 or 29" in Article 30(1) and (2) are substituted by "Article 28 as applied with modifications by regulation 3 of and paragraph 1(e) of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1993".

Effect of the changes:

Where the child has been taken away from the commissioning couple's home without the leave of the court or permission from the commissioning couple, the court will have the power to order the return of the child and take any further action to achieve this.

**[NOTE: The Children (Northern Ireland) Order will amend Article 30 bringing it into line with section 29 of the 1976 Act as amended by paragraph 15 of Schedule 10 to the Children Act 1989.]**

(f) Article 30 (return of a child taken away in breach of Article 28 or 29)

As if for the words "Article 28 or 29" on each occasion they appear there were substituted the words "Article 28 as applied with modifications by regulation 3 of and paragraph 1(e) of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1993".

## EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

### 2. Effect of a parental order

#### Article 40(1)(a),(2),(4) and (6) - (status conferred by adoption)

Changes to Article 40(1)(a),(2),(4) and (6):

The words "an adopted child" are substituted by "a child who is the subject of a parental order" and the words "adopters" are substituted by "persons who obtain the parental order", each time they appear.

In Article 40(2) the words "subject to paragraph (3)" and "or adopter" are omitted.

In Article 40(6) the word "adoption" is substituted by "parental order" and the words "Subject to the provisions of this Part" and "or after the commencement of this Part, whichever is the later" are omitted.

Effect of the changes:

Article 40(1)(a) - A child who is the subject of a parental order is treated in law as the child of the marriage of the couple who obtain the parental order (whether the child was born before or after the marriage took place).

Article 40(2) - A child who is the subject of a parental order is treated as if he were the child of the couple who obtain the parental order and not the child of anyone else.

Article 40(4) - A child who is the subject of a parental order is not illegitimate.

Article 40(6) - The provisions of Article 40 will apply to the making of enactments or instruments that have been passed or made before a parental order has been made e.g. wills, disposition of property, inheritance of title, peerage etc. The section also applies to those issues occurring after the parental order is made.



## 2. Effect of a parental order

Article 40(1)(a), (2),  
(4) and (6) (status  
conferred by adoption)

(i) As if for the words "an adopted child" there were substituted on each occasion they appear, the words "a child who is the subject of a parental order"; and

(ii) as if for the words "adopters" and "adopter" on each occasion they appear, there were substituted the words "persons who obtain the parental order"; and

(iii) as if the words in Article 40(2) "subject to paragraph (3)," and "or adopter" were omitted; and

(iv) as if for the word "adoption" in Article 40(6) there were substituted the words "parental order"; and

(v) as if the words in Article 40(6) "Subject to the provisions of this Part," and "or after the commencement of this Part, whichever is the later" were omitted.

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

3. Interpretation of certain events consequent upon the making of a parental order

(a) Article 42 - (rules of construction for instruments concerning property)

Changes to Article 42:

In Article 42(2) the words "Article 40(1)" are substituted by "Article 40(1)(a) as applied with modifications by regulation 3 of and paragraph 2 of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1993" and the words "of the adoptive parent or parents" are substituted by "in respect of whom a husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 have obtained a parental order".

In Article 42(2)(a) and (4) the words "adopted child" are substituted by "child the subject of a parental order"; also in Article 42(4) the word "adoption" is substituted by "making of the parental order".

In Article 42(2)(b) the word "adopted" is substituted by "in respect of whom parental orders were made"

In Article 42(5) the word "adopt" is substituted by "obtain a parental order in respect of".

Effect of Article 42:

This Article clarifies the position on the giving of gifts such as legacy in a will. For example, if a grandmother of a parental order child (that is, a parent of the applicant for a parental order) left a legacy to her grandchildren who were living at her death, the parental order child would only receive the legacy when the parental order is made, regardless of whether the child was already alive at the grandmother's death.

Alternatively, if the grandmother left a bequest to her daughter until she had a child and then the bequest was to pass to the child, the child would be entitled to the bequest from the date of the parental order and not from the date of his/her birth.

3. Interpretation of certain events consequent upon the making of a parental order

(a) Article 42 (rules of construction for instruments concerning property)

(i) As if for the words in Article 42(2) "Article 40(1)" there were substituted the words "Article 40(1)(a) as applied with modifications by regulation 3 of and paragraph 2 of Schedule 2 to the Parental Orders for Gamete Donors 1993"; and

(ii) as if for the words in Article 42(2) "of the adoptive parent or parents" there were substituted the words "in respect of whom a husband and wife as specified in section 30 of the Human Fertilisation and Embryology Act 1990 have obtained a parental order"; and

(iii) as if for the words in Article 42(2) and (4) "adopted child" there were substituted the words "child the subject of the parental order"; and

(iv) as if for the words in Article 42(2)(b) "adopted" there were substituted the words "in respect of whom parental orders were made"; and



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(b) Article 44 - (property devolving with peerages)**

Changes to Article 44:

The words "an adoption" are substituted by "the making of a parental order".

Effect of the changes:

This Article prevents a child who is the subject of a parental order from inheriting a peerage, dignity or title of honour and from succeeding to property connected with any peerage etc unless this has been expressly provided for in the instrument of transfer.

(a) Article 42 (continued) (v) as if for the word in Article 42(4) "adoption" there were substituted the words "making of the parental order"; and

(vi) as if in Article 42(5) for the word "adopt" there were substituted the words "obtain a parental order in respect of".

(b) Article 44 As if for the words "An adoption" (property devolving with on each occasion they appear peerages) there were substituted the words "The making of a parental order".

## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(c) Article 45 - (protection of trustees and personal representatives)**

Changes to Article 45:

In Article 45(1) the word "adoption" is substituted by "parental order".

Effect of the changes:

A trustee or personal representative is not under any duty, by virtue of the law relating to trusts or the administration of estates, to make any enquiries as to whether any parental order has been made before he conveys or distributes property.

A trustee or personal representative shall not be liable to any person in respect of a conveyance or distribution of property made without regard to the making of a parental order if he did not receive notice of the parental order before the conveyance or distribution.

Article 45 does not prejudice the right of a person to pursue any legal remedy if a property to which he feels he has some entitlement has been distributed to another person.



(c) Article 45  
(protection of trustees  
and personal representatives)

As if for the word in Article 45(1)  
"adoption" there were substituted  
the words "parental order".

## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(d) Article 46 - (meaning of "disposition")**

#### **Changes to Article 46:**

Each time the words "this Part" appear they are substituted by "the application of Articles 40, 42, 44, 45 and 47 as modified by regulation 3 of and paragraphs 2 and 3(a), (b), (c) and (e) respectively of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1973".

#### **Effect of the changes:**

The modified provisions apply to an oral disposition as if that disposition were in the form of an instrument made on the same date.

For the purposes of the modified provisions a will or codicil is to be regarded as executed on the death of the testator.

For the purposes of the modified provisions an intestacy is to be treated as contained in an instrument executed by the deceased person, while he was fully capable of doing so, immediately before his death.

References in the modified provisions to dispositions of property include references to dispositions by the creation of entailed interests.

(d) Article 46 (meaning of "disposition")

(i) As if for the words "this Part" each time they appear there were substituted the words "the application of Articles 40, 42, 44, 45 and 47 as modified by regulation 3 of and paragraphs 2 and 3(a), (b), (c) and (e) respectively of Schedule 2 to the Parental Orders for Gamete Donors Regulations 1993".



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **4. Prohibition against Advertisements**

#### **Article 60 - (restriction against advertisement)**

##### **Changes to Article 60**

Paragraphs (a), (b) and (c) of Article 60(1) have been substituted by the following:

- "(a) that a person is or may be willing to enter into an arrangement for the purpose of section 30 of the Human Fertilisation and Embryology Act 1990; or
- (b) that a person is or may be willing to negotiate or facilitate the making of such an arrangement for that purpose".

In Article 60(2) the words "this Article" are substituted by "this Article as applied with modifications by regulation 3 of and paragraph 4 of Schedule 2 to the parental orders for Gamete Donors Regulations 1993".

##### **Effect of the changes:**

These regulations do not affect the prohibition against advertising contained in the Surrogacy Arrangements Act 1985.

It is unlawful to publish an advertisement indicating that a person may be willing to enter into an arrangement for the purpose of section 30 or that a person may be willing to negotiate or facilitate such an arrangement.

A person who contravenes this provision is guilty of an offence and liable on summary conviction to a fine.

#### 4. Prohibition against advertisements

Article 60 (restriction  
on advertisements)

(i) As if for paragraphs (a),  
(b) and (c) of Article 60(1)  
there were substituted the  
following paragraphs-

"(a) that a person is or may be  
willing to enter into an  
arrangement for the purpose of  
section 30 of the Human  
Fertilisation and Embryology Act  
1990, or

(b) that a person is or may be  
willing to negotiate or  
facilitate the making of such an  
arrangement for that purpose." ;  
and

(ii) as if for the words in  
Article 60(2) "this Article"  
there were substituted the words  
"this Article as applied with  
modifications by regulation 3 of  
and paragraph 4 of Schedule 2 to  
the Parental Orders for Gamete  
Donors Regulations 1993".

## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **5. Procedure**

#### **(a) Article 62 - (evidence of agreement or consent)**

##### **Changes to Article 62:**

In Article 62(1) the words "this Order" are substituted by "section 30 of the Human Fertilisation and Embryology Act 1990".

The word "adoption" on each occasion it appears is omitted.

##### **Effect of the Changes:**

Any agreement or consent required by section 30 of the HF&E Act 1990 to the making of a parental order may be given in writing. If the document signifying agreement or consent is witnessed in accordance with the rules it is admissible as evidence without further proof of the signature of the person who signed it.

A document which has been witnessed according to the rules is presumed to be so witnessed on the date and at the place specified unless it is proved to the contrary.



## 5. Procedure

(a) Article 62  
(evidence of agreement  
and consent)

(i) As if for the words "this  
Order" there were substituted the  
words "section 30 of the Human  
Fertilisation and Embryology Act  
1990"; and

(ii) as if the word "adoption"  
on each occasion it appears were  
omitted.

## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(b) Article 65 - (proceedings to be in private)**

Changes to Article 65:

The words "under Part III. Article 30 and Article 57" are substituted by "pursuant to section 30 of the Human Fertilisation and Embryology Act 1990".

Effect of the changes:

Proceedings concerning parental orders may be heard in private.

(b) Article 65  
(proceedings to be in  
private)

As if the words "under Part III,  
Article 30 and Article 57" there  
were substituted the words  
"pursuant to section 30 of the  
Human Fertilisation and  
Embryology Act 1990".



## **EXPLANATORY NOTE - NOT PART OF THE REGULATIONS**

### **(c) Article 66 - (guardians ad litem)**

#### **Changes to Article 66**

In Article 66(1) the words "an adoption order or an order freeing a child for adoption or an order under Article 20 or 57, adoption" are substituted by "an order under section 30 of the Human Fertilisation and Embryology Act 1990".

In Article 66(2) the word "adoption" is omitted.

#### **Effect of the changes:**

A guardian ad litem, whose duties are intended to safeguard the interests of the child, shall be appointed in all parental order cases. The guardian ad litem will act for the purpose of witnessing agreements and performing other duties as the rules [relating to any matter prescribed under section 30 of the Human Fertilisation and Embryology Act 1990] require.

(c) Article 66  
(guardians ad litem)

(i) As if for the words "an adoption order or an order freeing a child for adoption or an order under Article 20 or 57, adoption" there were substituted the words "an order under section 30 of the Human Fertilisation and Embryology Act 1990,"; and

(ii) as if the word in Article 66(2) "adoption" were omitted.

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

Article 2 (Interpretation)

This will contain the definitions of the terms such as "parental orders" and "husband and wife". These terms are explained in the Glossary of Terms at Annex 3.

EXPLANATORY NOTE - NOT PART OF THE REGULATIONS

## GLOSSARY OF TERMS

- Birth parents - the woman who gives birth to a child (the surrogate mother), and her husband (also known as surrogate parents).
- Commissioning couple - the husband and wife for whom a surrogate mother carries a child.
- Court Rules - the rules which govern court procedures. These are prepared by the Lord Chancellor's Department for England and Wales and the Northern Ireland Supreme Court Rules Committee for Northern Ireland.
- Gametes - sperm or eggs.
- Genetically related - a child is said to be genetically related to a person if the child was conceived using that person's gametes.
- Guardian ad litem - an independent social worker appointed by the court to report in writing on all the relevant facts relating to the parental order application.
- Husband and wife - the commissioning couple.
- Instrument of Transfer - a document transferring title to property e.g the conveyance of a house.



legal father - a) the husband of a surrogate mother, unless it can be shown that he did not consent to her treatment;

b) If the surrogate mother is single or if married, her husband did not consent to the treatment, the father will be the man with whom she received treatment as long as he is not the genetic father;

c) there will be no legal father when:

i) a surrogate mother is treated alone either if she is single or, if she is married, in cases where her husband has not consented to her treatment;

ii) a surrogate mother who is single or, if married, whose husband did not consent to her treatment is treated with a man who is the genetic father of the child.

Parental order - an order which provides for a child to be treated in law as a child of the commissioning couple.

Surrogate mother - a woman who carries a child for a commissioning couple as a result of the placing in her of an embryo, or sperm and eggs or through her artificial insemination.





